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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,043	09/24/2003	Ivano Gagliardi	CM2700L	4999
27752 7590 02/02/2007 THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION WINTON HILL BUSINESS CENTER - BOX 161 6110 CENTER HILL AVENUE CINCINNATI, OH 45224			EXAMINER NUTTER, NATHAN M	
			ART UNIT 1711	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/02/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/670,043

Applicant(s)

GAGLIARDI ET AL.

Examiner

Nathan M. Nutter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 16-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

Prosecution of claims 16-18 is hereby reopened in view of the Appeal Brief filed 21 November 2006.

In response to the amendment of 6 July 2005 and to the Appeal Brief of 21 November 2006, the following is being placed into effect.

The rejection of claim 17 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, is hereby expressly withdrawn.

The rejection of claims 16-18 under 35 U.S.C. 103(a) as being unpatentable over Cook et al (US 6,465,379) or Beihoffer et al (US 6,140,550) each in view of Kimura et al (US 5,026,800) is hereby expressly withdrawn.

The following rejections are being maintained and a new ground follows.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 16-18 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. The characterization of the thermoplastic as being a "water absorbent polymeric base material," which is critical or essential to the practice of

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the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976).

There is no support for the recitation or for the interpretation of the polymeric base material, which is disclosed in the instant Specification at page 6 (lines 16-22), to be labeled as "a water absorbent polymeric base material," as has been amended in the Response of 11 May 2006. The Specification does not characterize the polymeric base resin as being "water absorbent." Applicants cannot contend such without support in the Specification, as originally filed, and applicants certainly cannot argue against the references cited based upon this characterization.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 16-18 are rejected under 35 U.S.C. 102(b) as being unpatentable over Carlucci et al (EP 1 138 293).

Carlucci et al describe disposable, transparent absorbent articles that may comprise a liquid pervious surface, a liquid impervious surface and an absorbent structure comprised in between. The absorbent structure is provided by an absorbent core, Paragraph [0015]. Transparency of the article is at least 40% (see claim

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8, page 11). The absorbent core can be a single layer entity or comprise several layers, Paragraph [0028], such as (a) a primary fluid distribution layer, (b) a secondary fluid distribution layer (c) a fluid storage layer, (d) a fibrous layer and (e) other components. Several absorbent materials are used to make fluid storage layer, including cellulose wadding, modified crosslinked cellulose fibers, absorbent foams, absorbent sponges, polymeric fibers, etc., Paragraph [0032]. Hydrogels, superabsorbent or hydrocolloid materials are added to the fluid storage layer, Paragraph [0033]. Further, note Paragraph [0025] for transparency.

Claims 16-18 therefore lack novelty.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Soerens et al (US 6,822,135) or Dutkiewicz et al (US 6,562,742), each in view of Kimura et al (US 5,026,800).

The reference to Soerens et al discloses the manufacture of a fluid storage material in which certain particles are secured to one another and/or to a substrate with a crosslinkable binder composition. Note column 1 (lines 8-11) and column 4 (lines 8-

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32). The reference teaches the use of superabsorbent particles that may have a diameter of between 50 to 800 microns at column 4 (lines 47-59). The binder employed may be composed of hydrophilic polymers. Disposable articles are prepared using the fluid storage material.

The reference to Dutkiewicz et al discloses the production of an absorbent structure comprising an upper ply and a lower ply. Each ply contains binder/s and superabsorbent particles. Note column 18 (line 59) to column 19 (line 40).

Neither of the above references teaches the use of an angle-lacking shape of super-absorbent particles, and a transparency value of at least about 50%.

The patent to Kimura et al discloses a water-absorbent resin wherein the shape is angle-lacking. Note column 2 (line 67) to column 3 (line 3).

It would therefore have been obvious to ensure that the super-absorbent particles in Soerens et al or Dutkiewicz et al possess an angle-lacking shape in order (a) to make easy for handling, (b) to improve absorbency and (c) to enhance absorption rate.

With regard to the transparency "of at least 50%" recited in instant claim 17, it is the examiner's position that one of ordinary skill in the art would know to make a certain portion of the article transparent or translucent as required by the user of that article. This can easily be facilitated with desirability of end-product characteristics.

***Response to Arguments***

Applicant's arguments filed 6 July 2005 and in the Appeal Brief of 21 November 2006 have been fully considered but they are not persuasive.

With regard to the reference to Carlucci et al, paragraph [0047] limits the thickness of the absorbent core which comprises the absorbent particles as having a "thickness of....more preferable between 0.1 and 1.8 mm (between 100 and 1800  $\mu\text{m}$ )."

This thickness embraces that recited and claimed herein. The particles contained therein would certainly have diameters smaller than that, or the layer would be thicker to accommodate. In the instant application at page 2 (lines 28-31), the reference is characterized as consisting of "a hot melt adhesive containing particles of an absorbent gelling material." Applicants then contend in their response that the polymeric material isn't shown. Applicants have been directed to paragraph [0015] for the disclosure of layers, as herein claimed, and apparently the same as disclosed in the instant Specification. Applicants contend, but have provided no evidence to support, a granular particle is not a "substantially angle-lacking shape." What angles are present in a spherically-shaped object?

With regard to the reference to Soerens et al, the various binders employed at column 4 (lines 1-32), are taught to be hydrophilic polymers. It is pointed out that the instant claims do not exclude any binder. The reference teaches the use of substrates, as in the instant invention. See column 17 (line 47) to column 18 (line 15) where this is

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taught, and may include a polyethylene (thermoplastic, as herein claimed) at the paragraph bridging column 19 to column 20.

The reference to Kimura et al is relied upon for the reasons set out in the rejection and is not used solely as the basis of a rejection.

With regard to the reference to Dutkiewicz et al taken in view of Kimura et al, it is pointed out that if each reference were to teach every aspect of the claims, the rejection would be separately made under 35 USC 102, and not in the combination, as cited, under 35 USC 103.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

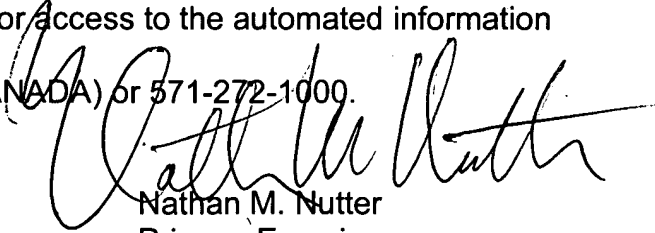


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan M. Nutter whose telephone number is 571-272-1076. The examiner can normally be reached on 9:30 a.m.-6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Nathan M. Nutter  
Primary Examiner  
Art Unit 1711

nmn

30 January 2007